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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band, ET Docket No. 13-49***

Dear Ms. Dortch:

In recent letters, supporters of Intelligent Transportation Systems (the "ITS filers") urge the Commission to block access to the 5.9 GHz band for all other uses, and instead, to double down on a failed technology-specific approach to spectrum policy. This is nothing more than a renewed attempt to delay FCC action and preserve an unwarranted and underutilized government subsidy. Their arguments are unpersuasive.

First, the Commission should not ignore the prevalence of market-driven vehicle safety technologies on the roads today, such as blind-spot detectors, crash-avoidance sensors, radar, lidar, cameras and more, none of which rely on DSRC or 5.9 GHz spectrum, when considering the ITS filers' comments. The ITS filers disregard these technological developments and continue to ask for exclusive spectrum access, promising that the benefits of DSRC are just around the corner. But the same organizations have been making the same claims for decades,[1] and DSRC has yet to materialize in the marketplace.

The ITS filers also now claim that re-allocating the 5.9 GHz band for non-DSRC use would force states and the automotive industry to abandon the handful of government-subsidized pilot projects that are trialing DSRC, many of which relate to services like traffic signal timing that are already available using other spectrum. Stranded investment in these few pilots, which depend on a technology that automakers no longer plan to use and leave the band unused in the vast majority of the country, are not an acceptable justification for continued preservation of a

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[1] *See* Petition for Rulemaking of the Intelligent Transportation Society of America, RM-9096, at i (filed May 19, 1997); Comments of the American Association of State Highway Transportation Officials Special Committee on Communications, RM-9096, at 3 (filed July 24, 1997).

government subsidy, or for blocking broadband expansion across the United States. Additionally, the existing 5.9 GHz rules are the product of 1999 "command-and-control" spectrum policy, which the Commission has since abandoned because of its stifling effect on innovation and spectrum utilization. The ITS filers' claims have no merit, and the Commission should no longer rely on their promises that they will someday intensively use all 75 megahertz (more than twice the amount Europe and China have allocated) of the 5.9 GHz band.[2]

Second, the recent ITS filings ignore the country's pressing need for additional unlicensed spectrum to maintain technological leadership in Wi-Fi 6 and 5G. Wi-Fi 6 offers gigabit speeds, superior performance in crowded environments, and better device battery life, but relies on contiguous 160 MHz channels to bring these benefits to consumers.[3] The U.S. does not have sufficient unlicensed spectrum to deliver these benefits today. Opening additional mid-band unlicensed spectrum (particularly 5 GHz spectrum, which has propagation characteristics well-suited for outdoor and rural connectivity) will unleash the 5G unlicensed ecosystem, enabling low-latency communications, machine-to-machine, and smart city applications, like smart cameras, traffic monitoring, security sensors, and more. This ecosystem exists today but needs additional unlicensed mid-band spectrum for consumers to reap the full benefits of these technologies. Accordingly, opening the 5.9 GHz band for unlicensed use will accelerate the U.S. 5G transition. While the FCC is working hard to identify the best situated spectrum to support wireless broadband growth, the ITS filers ask the Commission to instead leave 75 megahertz of valuable mid-band spectrum indefinitely unused in the vast majority of the country. This runs contrary to the Commission's 5G and broadband deployment goals.

Third, to further delay a long-awaited proceeding, the ITS filers urge the Commission to waste additional resources on a testing regime that has since been superseded by technological developments in the automotive industry. This outdated testing also focuses on co-channel sharing between DSRC systems and Wi-Fi, which the FCC's first phase of testing showed to be less reliable than adjacent-channel operations, and which neither ITS nor Wi-Fi proponents view as reliable for sharing. There is no reason to continue unnecessary testing of co-channel operations, when, as Commissioner O'Rielly has observed, "[t]he reality is that the entire debate has gravitated away from the type of sharing regime envisioned in the testing."[4] NCTA agrees with Commissioner O'Rielly that conducting further tests would amount to an irrelevant inquiry and waste time and taxpayer dollars.

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2 Open Technology Institute at New America, Comments on C-V2X Communications, U.S. Dep't of Transp. Docket No. DOT-OST-2018-0210, at 2-3 (filed Feb. 22, 2019); 5GAA, *White Paper on ITS Spectrum Utilization In the Asia Pacific Region* 6, 16 (2018), https://5gaa.org/wp-content/uploads/2018/07/5GAA_WhitePaper_ITS-spectrum-utilization-in-the-Asia-Pacific-Region_FINAL_160718docx.pdf.

3 Vijay Nagarajan, *160 MHz Channels: The Wi-Fi 6 Superhighway*, Broadcom (Aug. 23, 2019), https://www.broadcom.com/blog/160-mhz-channels-wi-fi-6-superhighway.

4 *See* Statement of Comm'r O'Rielly, FCC, on 5.9 GHz Phase I Testing Data (Oct. 29, 2018), https://docs.fcc.gov/public/attachments/DOC-354831A1.pdf.

Finally, the ITS filers' recommendation for further delay does not promote automotive innovation and may undermine safety. Even ITS supporters recognize that the current rules stifle auto safety technologies. The Association of Global Automakers, for example, "recognizes that the current regulatory framework for the 5.9 GHz band is unworkable for the V2X future."[5] And the state departments of transportation "fully recognize that there is no current agreement among the transportation industry on which particular technology will be used to broadly deploy V2X applications."[6] Accordingly, the ITS filers' approach would simply seek to frustrate even a broad "fresh look" FNPRM that considers all the options for the band. This position blocks potential C-V2X access to the band, as well as other future automotive communications innovations, and leaves only the failed DSRC technology to languish.

The Commission should not permit a small number of companies to preserve exclusive access to a valuable piece of spectrum at the price of viable automotive safety technologies and delivering more broadband spectrum and advanced connectivity to the country. For the sake of auto safety innovation, broadband deployment, and the American 5G transition, the Commission should move forward with an FNPRM to consider new rules for the band.

Sincerely,

/s/ Danielle J. Piñeres

Danielle J. Piñeres

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[5] Letter from Scott Delacourt, Counsel to the Association of Global Automakers, Inc., to Marlene H. Dortch, Secretary, FCC, ET Docket No. 13-49, GN Docket No. 18-357, at 4 (filed May 17, 2019).

[6] Letter from American Association of State Highway and Transportation Officials et al., to Ajit Pai, Chairman, FCC, ET Docket No. 13-49, GN Docket Nos. 18-357 & 17-183, at 1 (filed Aug. 19, 2019).